IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. l44 of 2005
in
Writ Petition No 53l of l995

Nagdevi Kamgar Sabha.. appellant
vs
Shri K M Desai
Chairman Board of Arbitration and anr..Respondents
Mr.Bhavesh Parmar with Vijaya Jagtap for appellant
Mr. K.S.Bapat for respondent nos.9,l2, 24, 26, 53, 54, 66, 75, 8l, 86, 97, and 99.
Mr.S.C.Naidu for respondent nos.3 to 6
Mr. S.K.Talsania for respondent nos.l9 and 56.
Mr. Mane AGP for State

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l0.3.2005

P.C:

. Heard learned counsel appearing for the parties.

2. The Appellant and Respondent no. 7 are registered trade unions representing workers in Nagdevi area. On 27.l.l992 an arbitration agreement was entered into under section l0-A of the Industrial Disputes Act, l947 (ID Act) between the Respondent no. 7 and Respondent nos 3 to 6 who are associations of trading establishments formed according to the respective trades. On l0.9.l992 a notification was issued under section l0-A(3) of the ID Act. The Appellant submitted a charter of

demands to the Commissioner of Labour on 28.8.l992 and when the arbitration agreement was arrived at between the Respondent no. 7 and Respondent nos. 3 to 6, the petitioner protested before the Commissioner of labour by letters dated 8.9.l992 and l6.9.l992.

3. It appears that the Appellant filed Writ Petition No. 2773 of l992 in which order was passed by the learned single Judge dated l8.3.l993 recording the agreement between the parties that the petitioner would be entitled to represent its workers and would be entitled to be heard before the Board of Arbitrators. The Appellant had filed yet another petition being Writ Petition No.624 of l994 wherein an order came to be passed by the learned single Judge directing the Arbitrators to arbitrate upon the dispute raised by the Appellant union as well. Before the Board of Arbitrators, Appellant was impleaded as a party. Thereafter the Board of Arbitrators passed an award dated 29.l0.l994. This award was challenged by the associations of trading establishments in Writ Petition No.43 of l996 and ultimately the arbitral award was accepted by the parties subject to certain modifications which were agreed upon between the parties, without prejudice to the

rights and contentions of the Appellant Nagdevi Kamgar Sabha in the present petition.

4. By this petition the Appellant was mainly seeking direction to make the award applicable to the establishments represented by the union retrospectively with effect from May l99l. The petition was opposed by the Respondents mainly on the ground that the notice under sub-section (3-A) of section l0A of the ID Act was not issued and consequently provisions of section l8(3) of the ID Act are not applicable and the benefits of the award cannot be extended to the workmen represented by the petitioner union. Before the learned single Judge an affidavit was filed by the Assistant Commissioner of Labour clarifying that while arbitration agreement under section l0A(3) was published on l0.9.l992 no notification under section l0A(3)A has been issued and/or published in the Government Gazette. The learned single Judge held that before the Respondents are held to be bound by the arbitral award, condition precedent which is contained in section l8(3) of the ID Act must be shown to exist. That condition has a requirement that there has to be a notification under section l0A(3)A. No such notification was issued or published, and therefore, it is

impossible for the court to extend the provisions of the award in the absence of a mandatory statutory procedure having not been followed. The learned single Judge came to the conclusion that no notice under sub-section (3-A) of section l0A of the ID Act was issued and consequently provisions of section l8(3) of the ID Act are not applicable and the award cannot be extended to the workmen represented by the Appellant union.

5. We have heard the arguments of the learned counsel at some length. We are of the opinion that no fault could be found with the order of the learned single Judge. In the absence of notification published or notice issued under sub-section (3A) of section l0A of the ID Act the award cannot be extended to the Respondent establishments. At the same time we cannot ignore that though the workers are fighting of wages from l99l their wages remained the same whereas the wages of similarly situated employees were revised pursuant to the award of the arbitrators. In view of the peculiar facts and circumstances of the case we direct the Asst Labour Commissioner, Mumbai to forthwith take the industrial dispute raised by the Appellant union in conciliation and after notice to the concerned parties make a failure report within

8 weeks if the conciliation ends in failure. On receipt of the failure report from the Asst Labour Commissioner the State Government shall pass appropriate order within a period of four weeks from the date of receipt of failure report.

. Appeal is accordingly disposed of.

. All the contentions on the question of law and fact are left open to the parties.